



IN DEPTH: HUMAN RESOURCES

From the May 27, 2005 print edition

Legal Matters

How to ensure you're not courting workplace litigation

The litigious business climate today shows no signs of diminishing. Recent studies conducted by both the private and public sectors point to the unfortunate conclusion that workplace litigation will continue to increase. Consider that:

Experts estimate workplace litigation today comprises nearly 75 percent of all disputes against businesses.

In 2004, the U.S. Chamber Institute for Legal Reform reported that small businesses incur over \$88 billion annually in litigation expenses.

The Equal Employment Opportunity Commission collected a record \$420 million in 2004 from employers found in violation of discrimination laws, with \$168 million from litigation and \$252 million from pre-litigation settlement and fines.

A 2004 survey of small businesses conducted by The [National Federation of Independent Business](#) found that nearly half of those polled were "very concerned" or "somewhat concerned" about the potential for being sued.

Fifty-seven percent of those polled by law firm [Jackson Lewis](#) for its 2003 Annual Workplace Law Survey reported an employee filing suit against their companies in 2003. This was an 8 percent increase over 2002 statistics.

A myriad of complex laws and regulations and inconsistent application within workplaces can further complicate an employer's ability to minimize this exposure. Whether a lawsuit has any merit, the direct and indirect costs to employers reflected in attorneys' fees, lost productivity, decreased employee morale, increased turnover and poor internal and external public relations can strike a disruptive blow to any business.

Luckily, the landscape is not all doom and gloom. Never before has the concept of "human resources" played such an important role in minimizing this risk. While a business faces many factors beyond its control, how an employer controls what it can often makes the difference.

Proactively managing with sensitivity and consistency its internal "human" investment coupled with utilizing all internal and external "resources" to stay abreast of the changing laws and regulations provides a strong defense for any employer. While by no means exhaustive, the following checklist can help employers assess whether their operations require a tune-up.

The "human" element

In many instances, employee anger over perceived unfair treatment -- rather than actual illegal conduct -- drives worker lawsuits. Management behavior and corporate policies (or lack thereof) can contribute to either preventing or increasing these actions. To create a fair and appropriate corporate culture, many human resources professionals encourage businesses to consider:

- Are employees treated with dignity, consistency and respect by management?

This includes terminating for cause and with documentation; making employees feel heard and appreciated; administering disciplinary action that gives employees opportunities to explain alleged misconduct; and offering constructive feedback on employee performance.

- Does your company have established policies to guide managers and employees on workplace conduct and expectations?

Established company policies educate all about expectations. If a company mandates compliance, it can help to promote consistent treatment of all employees.

- Does your company make clear the possible consequences for inappropriate conduct?

Company policies must clearly communicate to all that actions constituting or promoting a hostile work environment will not be tolerated. Management must consistently follow through with appropriate discipline when such actions occur.

- Does your company have a management training program?

This program should minimally include components on appropriate management behavior and expectations; how to handle difficult employee situations; and company policies and procedures.

- Do your managers honestly and fairly evaluate performance?

Terminating someone for poor performance after years of compensation increases may call into question an employer's real motivation for the separation. A confused and angry former employee may lead the employer down the lawsuit path.

- Do your managers address performance issues with employees promptly?

A manager needs to communicate consistently with an employee about specific areas for improvement, offer subsequent feedback about whether change has occurred, and document these conversations in writing. A manager who discharges a poor performer without offering constructive feedback and documentation runs the risk that the employee may react negatively and litigiously.

Maximizing resources

In addition to managing internal resources and talent, businesses must also find a way to provide employees with up-to-date knowledge on the ever-changing and complex employment laws and regulations. In recent years, laws such as the Americans with Disabilities Act and the Family and Medical Leave Act have imposed significant and far-reaching compliance obligations on employers of all sizes. Working with an external human resource specialist to create employee education and training programs can help a company learn about legal revisions and quickly implement changes to its overall human resource management strategy.

According to the Outsourcing Institute, companies choose to outsource a variety of non-revenue producing functions to stay focused on their core revenue-generating business competencies. In addition to ensuring compliance with employment laws and regulations, a full-service outside human resources partner can handle all of a company's human resources functions, including the development of training programs for management and staff.

Minimizing workplace litigation requires a comprehensive strategy that incorporates employee training and education programs about employment laws and regulations; a corporate culture of employee respect and

sensitivity; and consistent application of sound corporate policies and procedures.

When you compare the cost of developing a comprehensive training and education program with the potential expense of defending a business against an employment claim, an investment in training makes good business sense. This investment will not only reduce the risk of employment-related lawsuits, it will result in a more harmonious and productive work force.

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